CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1938

No. 118

THE UNITED STATES OF AMERICA, PETITIONER

vs.

KATHLEEN McCLURE, AS ADMINISTRATRIX OF THE ESTATE OF JOHN F. McCLURE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 24, 1938
CERTIORARI GRANTED OCTOBER 10, 1938

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 154

THE UNITED STATES OF AMERICA, PETITIONER

vs.

KATHLEEN McCLURE, AS ADMINISTRATRIX OF THE ESTATE OF JOHN F. McCLURE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

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Attorneys for Appellee

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, Sep. 16, 1936. A. A. La Framboise, Clerk. Eva M. Hardin, Deputy.

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. L-4803

KATHLEEN McCLURE, as administratrix of the estate of John F. McClure, deceased, and and KATHLEEN McCLURE individually,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

AMENDED COMPLAINT.

Comes now the plaintiff and for cause of action alleges:

1. That the plaintiff above named is the duly appointed, acting and qualified administratrix of the estate of John F. McClure, deceased, and is a resident of Spokane, Spokane County, Washington, and said plaintiff is the widow of the deceased.

2. That the deceased enlisted for service in the United States Army on the 14th day of December, 1917, and was honorably discharged therefrom on a surgeon's certificate of disability on January 29,

1919, due to rheumatic heart, from which illness he died on July 28, 1936.

3. That shortly after his enlistment, the decedent applied for a policy of war risk term insurance in the sum of $10,000, which policy of insurance was thereafter granted to the decedent, and provided indemnity for death or total permanent disability occurring while said policy was in full force and effect, said disability indemnity being the amount of $57.50 per month.

4. That during the decedent's service the premiums for said [1*] insurance were deducted from his monthly service pay, and said policy was continued in full force by the payment of premiums for some period thereafter; and that long after the cessation of the payment of premiums the decedent, on the 15th day of April, 1929, filed a claim for compensation, which claim was thereafter granted, and the rating made upon such claim was retroactive to the date of discharge, and the compensation payable thereunder was sufficient at all times to pay the premiums on said policy of insurance; and that such compensation remained and still remains uncollected; by reason whereof said policy of insurance did not lapse, but was continued in full force and effect until December 17, 1929, when the decedent was rated as totally and permanently disabled, or until the termination of war risk term insurance as provided in the Act of July 2, 1926, or, to-wit: until the 2nd day of July, 1927.

5. That while the decedent was in the United States military service he contracted a disease

*Page numbering appearing at the foot of page of original certified Transcript of Record.

known as "rheumatic heart", from which there developed a valvular heart disease, aortic stenosis, with failing compensation, by reason of which diseases this plaintiff alleges and believes that the decedent was totally and permanently disabled within the terms of said policy of insurance on the day of his discharge, to-wit: January 29, 1919.

6. That if the decedent was not totally and permanently disabled on January 29, 1919, then his said policy of war risk insurance remained in full force and effect up to and including the 17th day of December, 1929, unless said policy of war risk term insurance ceased to exist under the Act of July 2, 1926, on the 2nd day of July, 1927, in which latter event said policy of insurance was in full force and effect on said latter date. That if said decedent was not totally and permanently disabled on the 29th day of January, 1919, he was so disabled at some subsequent date while said policy of insurance was [2] still in full force and effect, and entitled to the benefits of said policy as provided by law, from the date of commencement of said total and permanent disability.

7. That by reason of the occurrence of total and permanent disability as aforesaid, the defendant became indebted to the deceased and the deceased became entitled to receive from the defendant the sum of $57.50 per month, commencing on the date of the occurrence of total and permanent disability and continuing to July 28, 1936, the date of his death, and thereafter the plaintiff, in her individual capacity became entitled to receive from the

defendant and the defendant became indebted to her in her individual capacity in the sum of $57.50 per month, commencing on the date of death of the decedent.

8. That under the terms and provisions of Section 305 of the World War Veterans' Act, as amended, 38 USCA 516, if recovery be had under said section, the plaintiff, in her individual capacity, as widow of the decedent, is entitled to receive all future payments to become due and payable until 240 payments have been made, and in the event of her death prior to the payment of all of said 240 installments, then the children of the decedent, namely, Edward McClure and Margaret McClure, will be entitled to receive said payments, said persons being the natural children of the decedent surviving him.

9. That on the 11th day of June, 1931, the decedent made claim to the defendant and to the Director of the United States Veterans Administration for payment of said insurance benefits, but that the said Director, by and through his duly appointed and authorized agents, the Insurance Claims Council, denied the decedent's said benefits, on the 17th day of April, 1935, notice of which denial was received by the decedent on the 12th day of May, 1935; and a disagreement, as contemplated by Section 19 of the World War Veterans Act as amended, now exists.

Wherefore, Plaintiff prays judgment in her representative capacity for the accrued sum at the rate of $57.50 per month, commencing on the date

of the occurrence of total and permanent disability to July 28, 1936, the date of death of the decedent, and the plaintiff further prays judgment in her individual capacity for the accrued sum due and owing at the rate of $57.50 per month, commencing July 28, 1936, and continuing the date of judgment herein.

GRAHAM K. BETTS
POST, RUSSELL, DAVIS & PAINE
Attorneys for Plaintiff.

State of Washington
County of Spokane—ss.

Kathleen McClure, being first duly sworn, on oath deposes and says: That she is the plaintiff in the above entitled action and makes this verification in support of the foregoing Amended Complaint; that she has read said Amended Complaint, knows the contents thereof and believes the same to be true.

KATHLEEN McCLURE

Subscribed and sworn to before me this 26th day of August, 1936.

[Seal] WARREN W. RUSSELL
Notary Public for the State of Washington, residing at Spokane.

[Endorsed]: Filed in the U. S. District Court Eastern Dist. of Washington, Sep. 16, 1936. A. A. La Framboise, Clerk. Eva M. Hardin, Deputy.

[Title of Court and Cause.]

ANSWER TO AMENDED COMPLAINT

Comes now the defendant above named and for Answer to the Amended Complaint of plaintiff herein admits, denies and alleges as follows:

I.

For answer to paragraph 1, defendant admits the same.

II.

For answer to paragraph 2, defendant admits the same down to and including the word "heart," and denies each and every other allegation therein contained except that said veteran died on July 28, 1936.

III.

Defendant denies paragraph 3.

IV.

Defendant denies paragraph 4.

V.

Defendant denies paragraph 5.

VI.

Defendant denies paagraph 6.

VII.

Defendant denies paragraph 7.

VIII.

Defendant denies paragraph 8.

IX.

Defendant denies paragraph 9.

Wherefore, defendant, having fully answered the Amended Complaint of the plaintiff, prays that the same be dismissed with costs and disbursements herein to be taxed.

J. M. SIMPSON
United States Attorney
WILL G. BEARDSLEE
Special Assistant to the Attorney General
GEORGE R. STUNTZ
Attorney, Department of Justice

United States of America
Eastern District of Washington
Northern Division—ss.

J. M. Simpson, being first duly sworn, on oath deposes and says:

That he is the duly appointed, qualified and acting United States Attorney for the Eastern District of Washington, and makes this verification as such; that he has read the above and foregoing Answer to Amended Complaint, knows the contents thereof, and that the same is true as he verily believes.

[Seal] J. M. SIMPSON

Subscribed and sworn to before me this 16th day of September, 1936.

A. A. LaFRAMBOISE
United States Clerk for the Eastern
District of Washington.
By EVA M. HARDIN, Deputy [6]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, Feb. 20, 1937. A. A. LaFramboise, Clerk. Eva M. Hardin, Deputy.

[Title of Court and Cause.]

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause having come duly and regularly on for trial before the Honorable J. Stanley Webster, Judge of the above entitled court, sitting without a jury, on the 17th day of September, 1936, the plaintiff appearing in person and by her attorneys Graham K. Betts and Alan G. Paine, the defendant appearing by its attorneys J. M. Simpson, United States Attorney, Will G. Beardslee, Special Assistant to the Attorney General, and George R. Stuntz, Attorney, Department of Justice, evidence having been adduced by both parties and arguments having been made in support thereof, the Court did thereupon take said cause under advisement and thereafter briefs were submitted by said parties, and the

Court having considered the same, does now make and enter the following,

FINDINGS OF FACT

I.

Trial by jury was duly waived by both parties in open court. [7]

II.

That the plaintiff is the duly appointed, acting and qualified administratrix of the estate of John F. McClure, deceased, and is a resident of Spokane, Spokane County, Washington, and said plaintiff is the widow of the deceased.

III.

That the deceased enlisted for service in the United States Army on December 14, 1917, and was honorably discharged therefrom on a surgeon's certificate of disability on January 29, 1919, due to rheumatic heart, from which illness he died on July 28, 1936.

IV.

That while in the service the deceased applied for and was granted a policy of war risk term insurance in the sum of $10,000, insuring against death or total permanent disability occurring while said policy was in full force and effect, the disability indemnity being the amount of $57.50 per month, and premiums were paid thereon to include the month of January, 1919.

V.

That deceased became permanently and totally disabled on the 1st day of April, 1929.

VI.

That the date the deceased permitted his policy of insurance to lapse for failure to pay the premium thereon he was suffering from a compensable disability, to wit; rheumatic heart, for which there was then due and uncollected compensation, and on the date of total permanent disability there was due and uncollected compensation in an amount sufficient to have paid all premiums due upon said policy, had the same been applied in payment thereof since the date of lapsation, and said compensation [8] still remains uncollected by reason of the provisions of Section 210 of the World War Veterans Act, as amended, the deceased having first made claim for such compensation on the 15th day of April, 1929.

VII.

That Section 305 of the World War Veterans Act, as amended, provides for the revival of insurance which would have otherwise lapsed for nonpayment of premiums if at the time of lapsation the insured was suffering from a compensable disability for which compensation was due and uncollected and he subsequently became totally permanently disabled, or died having due and uncollected compensation.

VIII.

That the deceased left surviving, his widow Kathleen McClure and two children, Edward McClure and Margaret McClure.

IX.

That a disagreement exists as provided by Section 19 of the World War Veterans Act, as amended.

Done in open court this ___ day of _____, 1937.

_____

Judge

From the foregoing findings of fact the Court makes and enters the following,

CONCLUSIONS OF LAW.

I.

That the court has jurisdiction of the parties and subject matter to this action. [9]

II.

That the full face value of the insurance policy sued upon, less the unpaid premiums at 5% interest compounded annually to the 1st day of April, 1929, is revived and in full force and effect.

III.

That the plaintiff is entitled to recover from the defendant in her administrative capacity the accrued amount due on account of total permanent

disability from the 1st day of April, 1919, to and including the 28th day of July, 1936.

IV.

That plaintiff is entitled to recover in her individual capacity as widow of the decedent the accrued amount due from the 28th day of July, 1936, to the date hereof.

Done in open court this ___ day of _____, 1937.

_____

Judge

Presented by:

_____

Attorneys for Plaintiff

United States Attorney's Office. Rec'd Feb. 20, 1937. Spokane, Wash. [10]

[Endorsed]: Filed in the U. S. District Court Eastern Dist. of Washington—Mar. 10, 1937. A. A. LaFramboise, Clerk.

[Title of Court and Cause.]

DEFENDANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause having come duly and regularly on for trial before the Honorable J. Stanley Webster, Judge of the above entitled Court, sitting without a jury, on the 17th day of September, 1936, the

plaintiff appearing in person and by her attorneys, Graham K. Bette and Alan G. Paine, the defendant appearing by its attorneys, J. M. Simpson, United States Attorney, Will G. Beardslee, Special Assistant to the Attorney General, and George R. Stuntz, Attorney, Department of Justice, evidence having been adduced by both parties and arguments having been made in support thereof, the Court did thereupon take said cause under advisement and thereafter briefs were submitted by said parties, and the Court having considered the same, does now make and enter the following

FINDINGS OF FACT.

I.

That trial by jury was duly waived by both parties in open Court.

II.

That the plaintiff is the duly appointed, acting and qualified administratrix of the estate of John F. McClure, deceased, [11] and is a resident of Spokane, Spokane County, Washington, and said plaintiff is the widow of the deceased, who died on July 28th, 1936.

III.

That the deceased enlisted for service in the United States Army on December 14, 1917, and was discharged therefrom on January 29, 1919.

IV.

That while in the service the deceased applied for and was granted a policy of War Risk Term insur-

ance in the sum of $10,000, insuring against death or total permanent disability occurring while said policy was in full force and effect, and premiums were paid thereon to include the month of January, 1919.

V.

That deceased became permanently and totally disabled on the 1st day of December, 1929, and was not permanently and totally disabled at any time previous to said date.

VI.

That the date the deceased permitted his policy of War Risk Term insurance to lapse for failure to pay premiums thereon, he was suffering from a compensable disability, to-wit: Rheumatic heart, for which there was due and uncollected compensation; and on December 1, 1929, there was due and uncollected compensation in an amount sufficient to have paid all premiums due on said policy, had the same been applied in payment thereof since the date of lapsation up to and including December 1, 1929, if said policy had not been terminated previous to said date by action of law.

VII.

That said policy sued upon lapsed for non-payment of premium due on January 31, 1919, and was not kept in full force and [12] effect thereafter by reason of Section 305, World War Veterans' Act as Amended, in that said Section 305 was repealed

by Public No. 2, 73d Congress (Title 38, Section 717 U. S. C.).

VIII.

That under the provisions of Section 301, World War Veterans' Act as amended (Title 39, Section 312, U. S. C.) the policy sued upon herein ceased and terminated on July 2, 1927, and was not in force and effect thereafter.

IX.

That the deceased left surviving, his widow, Kathleen McClure and two children, Edward McClure and Margaret McClure.

X.

That a disagreement exists as provided by Section 19 of the World War Veterans' Act as amended.

Done in open court this ___ day of _____, 1937.

_____

United States District Judge

From the foregoing Findings of Fact the Court makes and enters the following

CONCLUSIONS OF LAW.

I.

That the plaintiff is not entitled to recover in said action.

II.

That the defendant is entitled to a judgment of dismissal with prejudice and with costs to be taxed against the plaintiff according to law.

Done in open court this __ day of _____, 1937.

_____

United States District Judge

Presented by:

_____

Attorney, Department of Justice

Copy received Mar. 10, 1937. Alan G. Paine. Atty for Plaintiff. [13]

[Endorsed]: Filed in the U. S. District Court Eastern Dist. of Washington. Apr. 3, 1937. A. A. LaFramboise, Clerk.

[Title of Court and Cause.]

ORDER SETTLING FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This matter having come on for hearing before the Honorable J. Stanley Webster, Judge of the above-entitled court for settlement of the Findings of Fact and Conclusions of Law herein, the plaintiff appearing by her attorney Graham K. Betts, the defendant appearing by its attorneys, J. M. Simpson, United States Attorney, and George R. Stuntz, Attorney, Department of Justice, both parties having submitted proposed Findings of Fact and Conclusions of Law,

The Court does now make and enter the defendant's proposed Findings of Fact Nos. I, II, III, IV,

V, VIII, IX and X, and makes and enters the plaintiff's proposed Finding of Fact No. VI;

And the Court does further make and enter the defendant's proposed Conclusions of Law Nos. I and II, and does further make and enter plaintiff's proposed Conclusion of Law No. I;

Plaintiff excepts to the entry of defendant's proposed Finding of Fact No. VIII and to the entry of [14] defendant's proposed Conclusions of Law Nos. I and II, which exceptions are hereby allowed;

The Court refuses defendant's proposed Finding of Fact No. VII, to which defendant excepts and exception is allowed;

The Court further refuses plaintiff's Finding of Fact No. VII, to which the plaintiff excepts and exception is allowed;

And the Court further refuses the plaintiff's proposed Conclusions of Law Nos. II, III and IV, to each of which the plaintiff excepts and exception is allowed.

Dated this 3d day of April, 1937.

J. STANLEY WEBSTER
United States Judge for the Eastern District of Washington.

O. K. as to form. Graham K. Betts, Atty for Pltf.
George R. Stuntz, Atty for Deft. [15]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington. Apr. 3, 1937. A. A. LaFramboise, Clerk.

United States District Court Eastern District of Washington Northern Division.

No. L-1803

KATHLEEN McClure, as administratrix of the estate of John F. McClure, Deceased, and KATHLEEN McCLURE, individually,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT.

This cause having come on regularly for trial before the undersigned Judge of the above entitled Court on the 17th day of September, 1936, the plaintiff appearing in person and by her attorneys, Graham K. Betts and Alan G. Paine, and the defendant appearing by its attorneys, J. M. Simpson, United States Attorney for the Eastern District of Washington, Will G. Beardslee, Special Assistant to the Attorney General, and George R. Stuntz, Attorney, Department of Justice, a jury having been waived, and the plaintiff having offered and submitted her evidence, and the defendant having offered and submitted its evidence, and the Court having made findings of fact and conclusions of

law in the premises, and the Court being fully advised in the premises, it is hereby

Ordered, adjudged and decree that the above entitled cause be and the same is hereby dismissed with prejudice and with costs properly taxed by law against plaintiff.

To all of which plaintiff excepts and exception allowed.

Done in open court this 3rd day of April, 1937.

J. STANLEY WEBSTER
United States District Judge.

O. K. as to form. Graham K. Betts, Atty for Pltf.

Presented by:

George R. STUNTZ
Attorney, Department of Justice [16].

[Endorsed]: Filed in the U. S. District Court. Eastern Dist. of Washington. Apr. 3, 1937. A. A. LaFramboise, Clerk.

[Title of Court and Cause.]

STIPULATION.

It is hereby stipulated by and between the parties hereto that the plaintiff may have to and including the first day of July, 1937, to lodge and serve her proposed Bill of Exceptions herein and that the

present term of court be extended to and including said date.

Dated this 3d day of April, 1937.

GRAHAM K. BETTS,
Attorney for Plaintiff
J. J. SIMPSON
United States Attorney
GEORGE R. STUNTZ
Attorney, Department of Justice
Attorneys for Defendant [17]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington—Apr. 3, 1937. A. A. LaFramboise, Clerk.

[Title of Court and Cause.]

ORDER.

Upon stipulation of the parties hereto, it is hereby ordered that the plaintiff may have to and including the first day of July, 1937, to lodge and serve her proposed Bill of Exceptions herein and the present term of court is hereby extended to and including said date.

Dated this 3d day of April, 1937.

J. STANLEY WEBSTER
United States Judge for the Eastern District of Washington.

O. K. as to form. George R. Stuntz, Atty for Deft. Graham K. Betts, Atty. for Pltf. [18]

[Endorsed]: Lodged U. S. District Court, Eastern Dist. of Washington Jun. 29, 1937. A. A. LaFramboise, Clerk. E. L. Colby, Deputy. Filed in the U. S. District Court, Eastern Dist. of Washington—Jul. 1, 1937. A. A. LaFramboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

PLAINTIFF'S PROPOSED BILL OF EXCEPTIONS.

Be it remembered that heretofore and on the 17th day of September, 1936, the above entitled cause came on regularly for trial in the above entitled Court before the Honorable J. Stanley Webster, Judge of said Court, sitting without a jury. The plaintiff appearing in person and by her attorneys Graham K. Betts and Alan G. Paine, the defendant, United States of America, being represented by J. M. Simpson, United States Attorney, Will C. Beardslee, Special Assistant to the Attorney General and George R. Stuntz, Attorney, Department of Justice. Whereupon the following proceedings were had. It was stipulated in open court that trial by jury be waived. Thereafter testimony was taken on behalf of both parties and the cause was argued to the court and taken under advisement and briefs were submitted by both parties and within the time limited by law the plaintiff submitted requested findings of fact and conclusions of law as follows:

FINDINGS OF FACT.

I.

Trial by jury was duly waived by both parties in open court. [19].

II.

That the plaintiff is the duly appointed, acting and qualified administratrix of the estate of John F. McClure, deceased, and is a resident of Spokane, Spokane County, Washington, and said plaintiff is the widow of the deceased.

III.

That the deceased enlisted for service in the United States Army on December 14, 1917, and was honorably discharged therefrom on a surgeon's certificate of disability on January 29, 1919, due to rheumatic heart, from which illness he died on July 28, 1936.

IV.

That while in the service the deceased applied for was granted a policy of war risk term insurance in the sum of $10,000, insuring against death or total permanent disability occurring while said policy was in full force and effect, the disability indemnity being the amount of $57.50 per month, and premiums were paid thereon to include the month of January, 1919.

V.

That deceased became permanently and totally disabled on the 1st day of April, 1929.

VI.

That the date the deceased permitted his policy of insurance to lapse for failure to pay the premium thereon he was suffering from a compensable disability, to wit; rheumatic heart, for which there was then due and uncollected compensation, and on the date of total permanent disability there was due and uncollected compensation in an amount sufficient to have paid all premiums due upon said policy, had the same been applied in payment thereof since the date of lapsation, and said compensation [20] still remains uncollected by reason of the provisions of Section 210 of the World War Veterans Act, as amended, the deceased having first made claim for such compensation on the 15th day of April, 1929.

VII.

That Section 305 of the World War Veterans Act, as amended, provides for the revival of insurance which would have otherwise lapsed for nonpayment of premiums if at the time of lapsation the insured was suffering from a compensable disability for which compensation was due and uncollected and he subsequently became totally permanently disabled, or died having due and uncollected compensation.

VIII.

That the deceased left surviving, his widow Kathleen McClure and two children, Edward McClure and Margaret McClure.

IX.

That a disagreement exists as provided by Section 19 of the World War Veterans Act, as amended.

CONCLUSIONS OF LAW.

I.

That the court has jurisdiction of the parties and subject matter to this action.

II.

That the full face value of the insurance policy sued upon, less the unpaid premiums at 5% interest compounded annually to the 1st day of April, 1929, is revived and in full force and effect.

III.

That the plaintiff is entitled to recover from the defendant in her administrative capacity the accrued amount due on account of total permanent disability from the 1st day of [21] April, 1919, to and including the 28th day of July, 1936.

IV.

That plaintiff is entitled to recover in her individual capacity as widow of the decedent the accrued amount due from the 28th day of July, 1936, to the date hereof.

The defendant thereafter and within the time limited by law submitted its requested fiindings of fact and conclusions of law as follows:

FINDINGS OF FACT.

I.

That trial by jury was duly waived by both parties in open Court.

II.

That the plaintiff is the duly appointed, acting and qualified administratrix of the estate of John F. McClure, deceased, and is a resident of Spokane, Spokane County, Washington, and said plaintiff is the widow of the deceased, who died on July 28, 1936.

III.

That the deceased enlisted for service in the United States Army on December 14, 1917, and was discharged therefrom on January 29, 1919.

IV.

That while in the service the deceased applied for and was granted a policy of War Risk Term Insurance in the sum of $10,000, insuring against death or total permanent disability occurring while said policy was in full force and effect, and premiums were paid thereon to include the month of January, 1919.

V.

That deceased became permanently and totally disabled on the 1st day of December, 1929, and was not permanently and totally disabled at any time previous to said date. [22]

VI.

That the date the deceased permitted his policy

of War Risk Term Insurance to lapse for failure to pay premiums thereon, he was suffering from a compensable disability, to-wit: Rheumatic heart, for which there was due and uncollected compensation; and on December 1, 1929, there was due and uncollected compensation in an amount sufficient to have paid all premiums due on said policy, had the same been applied in payment thereof since the date of lapsation up to and including December 1, 1929, if said policy had not been terminated previous to said date by action of law.

VII.

That said policy sued upon lapsed for non-payment of premium due on January 31, 1919, and was not kept in full force and effect thereafter by reason of Section 305, World War Veterans' Act as amended, in that said Section 305, was repealed by Public No. 2, 73d Congress (Title 38, Section 717 U. S. C.).

VIII.

That under the provisions of Section 301, World War Veterans' Act as amended (Title 38, Section 512 U. S. C.) the policy sued upon herein ceased and terminated on July 2, 1927, and was not in force and effect thereafter.

IX.

That the deceased left surviving, his widow, Kathleen McClure and two children, Edward McClure and Margaret McClure.

X.

That a disagreement exists as provided by Section 19 of the World War Veterans' Act as amended.

CONCLUSIONS OF LAW.

I.

That the plaintiff is not entitled to recover in said action. [23]

II.

That the defendant is entitled to a judgment of dismissal with prejudice and with costs to be taxed against the plaintiff according to law.

The Court after consideration of said cause and on the 3rd day of April, 1937, entered its order settling the findings of fact and conclusions of law whereby it made and entered the following findings of fact and conclusions of law:

FINDINGS OF FACT.

I.

That trial by jury was duly waived by both parties in open court.

II.

That the plaintiff is the duly appointed, acting and qualified administratrix of the estate of John F. McClure, deceased, and is a resident of Spokane, Spokane County, Washington, and said plaintiff is the widow of the deceased, who died on July 28, 1936.

III.

That the deceased enlisted for service in the United States Army on December 14, 1917, and was discharged therefrom on January 29, 1919.

IV.

That while in the service the deceased applied for and was granted a policy of War Risk Term Insurance in the sum of $10,000, insuring against death or total permanent disability occurring while said policy was in full force and effect, and premiums were paid thereon to include the month of January, 1919. [24]

V.

That deceased became permanently and totally disabled on the 1st day of December, 1929, and was not permanently and totally disabled at any time previous to said date.

VI.

That the date the deceased permitted his policy of insurance to lapse for failure to pay the premium thereon he was suffering from a compensable disability, to wit; rheumatic heart, for which there was then due and uncollected compensation, and on the date of total permanent disability there was due and uncollected compensation in an amount sufficient to have paid all premiums due upon said policy, had the same been applied in payment thereof since the date of lapsation, and said compensation still remains uncollected by reason of the provisions of Section 210 of the World War Vet-

erans Act, as amended, the deceased having first made claim for such compensation on the 15th day of April, 1929.

VII.

That under the provisions of Section 301, World War Veterans' Act, as amended (Title 38, Section 512, U. S. C.) the policy sued upon herein ceased and terminated on July 2, 1927, and was not in force and effect thereafter.

VIII.

That the deceased left surviving, his widow, Kathleen McClure and two children, Edward McClure and Margaret McClure.

IX.

That a disagreement exists as provided by Section 19 of the World War Veterans' Act as amended. [25]

CONCLUSIONS OF LAW

I.

That the court has jurisdiction of the parties and subject matter to this action.

II.

That the plaintiff is not entitled to recover in said action.

III.

That the defendant is entitled to a judgment of dismissal with prejudice and with costs to be taxed against the plaintiff according to law.

The order settling findings of fact and conclusions of law is as follows:

"This matter having come on for hearing before the Honorable J. Stanley Webster, Judge of the above-entitled court for settlement of the Findings of Fact and Conclusions of Law herein, the plaintiff appearing by her attorney Graham K. Betts, the defendant appearing by its attorneys, J. M. Simpson, United States Attorney, and George R. Stuntz, Attorney, Department of Justice, both parties having submitted proposed Findings of Fact and Conclusions of Law,

"The Court does now make and enter the defendant's proposed Findings of Fact Nos. I, II, III, IV, V, VIII, IX and X, and make and enters the plaintiff's proposed Finding of Fact No. VI;

"And the Court does further make and enter the defendant's proposed Conclusions of Law Nos. I and II, and does further make and enter plaintiff's proposed Conclusion of Law No. I;

"Plaintiff excepts to the entry of defendant's proposed Finding of Fact No. VIII and to the entry of defendant's proposed Conclusions of Law Nos. I and II, which exceptions are hereby [26] allowed;

The Court refuses defendant's proposed Finding of Fact No. VII, to which defendant excepts and exception is allowed;

The Court further refuses plaintiff's Finding of Fact No. VII, to which the plaintiff excepts and exception is allowed;

proposed Conclusions of Law Nos. II, III and IV,

And the Court further refuses the plaintiff's

to each of which the plaintiff excepts and exception is allowed.

Dated this 3d day of April, 1937.

J. STANLEY WEBSTER
United States Judge for the
Eastern District of Washington

The plaintiff objected to the entry of the Court's finding No. VII, being the defendant's proposed finding No. VIII, for the reason that Section 301 of the World War Veterans' Act did not limit the applicability of Section 305 of the World War Veterans' Act, as amended, but that the latter constituted an exception to the termination of war risk term insurance; and objected to the Court's Conclusions of Law Nos. I and II, being the poposed Conclusions by the defendant, for the reason that the same were contrary to law and could not be sustained in view of Section 305 of the World War Veterans' Act, as amended. Thereupon the following order was entered extending the time for lodging and serving the proposed Bill of Exceptions and extending the September, 1936, term of court.

ORDER

Upon stipulation of the parties hereto, it is hereby Ordered that the plaintiff may have to and including the first day of July, 1937, to lodge and serve her proposed Bill of Exceptions herein

and the present term of court is hereby extended to and including said date. [27]

Dated this 3d day of April, 1937.

J. STANLEY WEBSTER
United States Judge for the
Eastern District of Washington.

And now, in furtherance of justice and that right and justice may be done the defendant, it prays that this, its bill of exceptions, may be settled, allowed, signed, sealed by the Court and made a part of the record.

GRAHAM K. BETTS
ALAN G. PAINE
Attorney for Plaintiff.

O. K. as a sufficient & true bill.

J. M. SIMPSON
U. S. Atty.
GEORGE R. STUNTZ
Atty. Dept. of Justice.

Copy rec'd this 29th of June, 1937.

J. M. SIMPSON
U. S. Atty. W. [28]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, Jul 1, 1937. A. A. La Framboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

ORDER

The above cause having come on for hearing on application of Plaintiff to settle the Bill of Ex-

ceptions herein, counsel for both parties being present, and it appearing to the Court that said Bill of Exceptions contains all of the material facts and matters occurring upon the trial of this cause and thereafter until the judgment herein necessary to the prosecution of an appeal herein, except the exhibits introduced in evidence, which are hereby made a part of said bill of exceptions; and the parties hereto having stipulated and agreed upon said bill, the court being duly advised, it is by the court

Ordered that said bill of exceptions be, and it hereby is settled as a true bill of exceptions in said cause, which contains all of the material facts, matters, things and exceptions therefor, occurring upon the trial of said cause and not of record heretofore necessary to a proper termination of an appeal herein and the same is hereby certified accordingly by the undersigned Judge of this Court, who presided at the trial of said cause, as a true, full and correct bill of exceptions and the Clerk of the Court is hereby ordered to file the same as a record in this cause and transmit the same to the Honorable Circuit Court of Appeals for the Ninth Circuit. [29]

It is further ordered that the Clerk of this Court attach all of the exhibits in this cause to the said bill of exceptions, making the same a part hereof.

Done in open court this 1st day of July, 1937.

J. STANLEY WEBSTER
Judge

Presented by:
GRAHAM K. BETTS
Attorneys for Plaintiff

Copy rec'd this 29th of June, 1937. J. M. Simpson, U. S. Atty. W. [30]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, Jun 29, 1937. A. A. La Framboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

NOTICE OF APPEAL

To: United States of America and J. M. Simpson, United States District Attorney and George R. Stunts, Special Assistant to the Attorney-General.

You and each of you will please take notice that Kathleen McClure, plaintiff in the above entitled cause, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment, decree and order entered in the above entitled cause on the 3rd day of April, 1937, and that the certified transcript of record will be filed in the said Appellate Court within thirty days from the filing of this notice.

GRAHAM K. BETTS
ALAN G. PAINE
Attorneys for Plaintiff

Copy rec'd this 29th of June, 1937. J. M. Simpson. U. S. Atty. W. [31]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, June 29, 1937. A. A. La Framboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

PETITION FOR APPEAL

The above named plaintiff, feeling herself aggrieved by the order, judgment and decree made and entered in this cause on the 3rd day of April, 1937, does hereby appeal from the said order, judgment and decree in each and every part thereof to the Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors herein, and said plaintiff prays that her appeal be allowed and citation be issued as provided by law, and that a transcript of the record, proceedings and papers upon which said order, judgment and decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, as by the rules of said court in such cases made and provided.

GRAHAM K. BETTS
ALAN G. PAINE
Attorneys for Plaintiff

Copy rec'd this 29th of June, 1937. J. M. Simpson, U. S. Atty. W. [32]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, Jun 29, 1937. A. A. La Framboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR

Comes now Kathleen McClure, plaintiff in the above entitled action by and through her attorneys, Graham K. Betts and Alan G. Paine, and in connection with her petition for an appeal herein and the allowance of the same, assigns the following errors which occurred at the trial of said cause and which were duly excepted to by her at the time of said trial and upon which she relies to reverse the judgment herein.

I.

The District Court erred in entering judgment of dismissal herein in favor of the defendant.

II.

The District Court erred in making and entering defendant's proposed finding of fact No. 8, which is as follows:

> "That under the provisions of Section 301, World War Veterans' Act as Amended (Title 38, Section 312, U.S.C.) the policy sued upon herein ceased and terminated on July 2, 1927, and was not in force and effect thereafter."

to the entry of which the plaintiff noted an exception.

III.

The District Court erred in making and entering defendant's proposed conclusion of law No. 1, which is as follows:

> "That the plaintiff is not entitled to recover in said action."

to the entry of which the plaintiff noted an exception. [33]

IV.

The District Court erred in making and entering defendant's proposed conclusion of law No. 2, which is as follows:

> "That the defendant is entitled to a judgment of dismissal with prejudice and with costs to be taxed against the plaintiff according to law."

to the entry of which the plaintiff noted an exception.

V.

The District Court erred in its failure and refusal to make and enter plaintiff's proposed finding of fact No. 7, which is as follows:

> "That Section 305 of the World War Veterans Act, as amended, provides for the revival of insurance which would have otherwise lapsed for nonpayment of premiums if at the time of lapsation the insured was suffering from a compensable disability for which compensation was due and uncollected and he subsequently became totally permanently disabled,

or died having due and uncollected compensation."

to which failure the plaintiff noted an exception.

VI.

The District Court erred in failing and refusing to make and enter plaintiff's proposed conclusion of law No. 2, which is as follows:

"That the full face value of the insurance policy sued upon, less the unpaid premiums at 5% interest compounded annually to the 1st day of April, 1929, is revived and in full force and effect."

to the failure and refusal of which the plaintiff noted an exception.

VII.

The District Court erred in its failure and refusal to make and enter plaintiff's proposed conclusion of law No. 3, which is as follows: [34]

"That the plaintiff is entitled to recover from the defendant in her administrative capacity the accrued amount due on account of total permanent disability from the 1st day of April, 1919, to and including the 28th day of July, 1936."

to the failure and refusal of which the plaintiff noted an exception.

VIII.

The District Court erred in failing and refusing to make and enter plaintiff's proposed conclusion of law No. 4, which is as follows:

"That plaintiff is entitled to recover in her individual capacity as widow of the decedent

the accrued amount due from the 28th day of July, 1936, to the date hereof."

to the failure and refusal of which the plaintiff noted an exception.

GRAHAM K. BETTS
ALAN G. PAINE
Attorneys for Plaintiff

Copy rec'd this 29th of June, 1937. J. M. Simpson, U. S. Atty. W. [35]

[Endorsed]: Filed in the U. S. District Court Eastern Dist. of Washington, July 1, 1937. A. A. La Framboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

ORDER ALLOWING APPEAL

On the application of the defendant herein, it is hereby

Ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment heretofore entered and filed herein on the 3rd day of April, 1937, be and the same is hereby allowed.

It is further ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit. It is further ordered that cost bond in the sum of $500.00 be filed.

Done in open court this 1st day of July, 1937.

J. STANLEY WEBSTER
Judge.

Presented by:
GRAHAM K. BETTS
Attorney for Plaintiff

Copy rec'd this 29th of June, 1937. J. M. Simpson, U. S. Atty. W. [36]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, July 1, 1937. A. A. La Framboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

CITATION ON APPEAL

United States of America
Eastern District of Washington
Northern Division—ss.

The President of the United States to: United States of America, and J. M. Simpson, United States District Attorney and George R. Stuntz, Special Assistant to the Attorney-General.

You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals to be held at the City of San Francisco, California, in the Ninth Judicial Circuit, on the 31st day of July, 1937, pursuant to an order allowing appeal filed in the office of the Clerk of the above entitled court, appealing from the final judgment signed and filed on the 3rd day of April, 1937, wherein the United States of America is defendant, and Kathleen McClure, as administratrix of the estate of John F. McClure,

deceased, and Kathleen McClure, individually, is plaintiff, to show cause, if any there be, why the judgment rendered against the said appellant as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

Witnesseth the Honorable J. Stanley Webster, United States District Judge for the Eastern District of Washington, Northern Division, this 1st day of July, 1937.

J. STANLEY WEBSTER
Judge

Presented by:
GRAHAM K. BETTS

Copy rec'd this 29th of June, 1937. J. M. Simpson, U. S. Atty. W. [37]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, July 1, 1937. A. A. La Framboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

COST BOND ON APPEAL

Know all men by these presents:

That the American Surety Company of New York, a corporation organized under the laws of the State of New York, and authorized to transact in the State of Washington the business of entering into undertakings such as that evidenced by this con-

tract, is held and firmly bound unto United States Of America, the defendant above named, in the just and full sum of five hundred ($500.00) Dollars, for which sum, well and truly to be paid, it binds itself, its successors and assigns, firmly by these presents.

Sealed with its seal and dated this 29th day of June, 1937.

The condition of this obligation is such that whereas, on the April 3, 1937, the above entitled action and court, the plaintiff's plea was denied and whereas, the plaintiff has petitioned for and been allowed by the above court an appeal to the United States Circuit Court of Appeals, therefore, the condition of this obligation is such that if the said appellants shall prosecute said appeal to effect, and answer and pay all costs, if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

AMERICAN SURETY COMPANY
OF NEW YORK
By W. L. BERRY
Resident Vice-President

[Corporate Seal] Attest: G. E. NEVERS
Resident Assistant Secretary

[38]

The foregoing undertaking approved by the Court this 1st day of July, 1937.

J. STANLEY WEBSTER
Judge of the United States District Court
for the Eastern District of Washington,
Northern Division.

Presented by
GRAHAM K. BETTS
Atty. for Pltf. [39]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, July 1, 1937. A. A. La Framboise, Clerk. Eva M. Hardin, Deputy.

[Title of Court and Cause.]

PRAECIPE

To the Clerk of the above entitled court:

You will please certify to the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, the documents listed below.

Amended Complaint.

Answer to Amended Complaint.

Plaintiff's proposed Findings of Fact and Conclusions of Law.

Defendant's proposed Findings of Fact and Conclusions of Law.

Order settling findings of fact and conclusions of law.

Judgment

Stipulation extending time to lodge and serve Bill of Exceptions to July 1, 1937.

Order extending time and term to lodge and serve Bill of Exceptions to July 1, 1937.

Bill of Exceptions.

Order settling bill of exceptions.

Notice of appeal.
Petition for appeal.
Assignments of error.
Order allowing appeal. [40]
Citation on appeal.
Bond on appeal.
This praecipe.

GRAHAM K. BETTS
ALAN G. PAINE
Attorneys for Plaintiff

Copy rec'd this 29th of June, 1937. J. M. Simpson, U. S. Atty. W. [41]

[Title of Court and Cause.]

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD

United States of America,
Eastern District of Washington—ss.

I, A. A. LaFramboise, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify the foregoing typewritten pages numbered from 1 to 41 inclusively, to be a full, true, correct and complete copy of so much of the record, papers and all other proceedings in the above entitled cause, as are necessary to the hearing of the appeal therein, in the United States Circuit Court of Appeals, as called for by the appellant in his praecipe, as the same remain of record and on file in the office of the Clerk of

said District Court, and that the same constitute the record on appeal from the judgment and decree of the District Court of the United States for the Eastern District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause.

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of $4.10, and that the said sum has been paid to me by Graham K. Betts, Attorney for the Appellant.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court at Spokane in said District, this 10th day of July, 1937.

[Seal] A. A. LA FRAMBOISE
Clerk.

[Endorsed]: Filed in the U. S. District Court Eastern Dist. of Washington July 1, 1937. A. A. LaFramboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

CITATION ON APPEAL

United States of America
Eastern District of Washington
Northern Division—ss.

The President of the United States to: United States of America, and J. M. Simpson, United States District Attorney and George R. Stuntz, Special Assistant to the Attorney-General.

You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals to be held at the City of San Francisco, California, in the Ninth Judicial Circuit, on the 31st day of July, 1937, pursuant to an order allowing appeal filed in the office of the Clerk of the above entitled court, appealing from the final judgment signed and filed on the 3rd day of April, 1937, wherein the United States of America is defendant, and Kathleen McClure, as administratrix of the estate of John F. McClure, deceased, and Kathleen McClure, individually, is plaintiff, to show cause, if any there be, why the judgment rendered against the said appellant as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

Witnesseth the Honorable J. Stanley Webster United States District Judge for the Eastern Dis-

trict of Washington, Northern Division, this 1st day of July, 1937.

J. STANLEY WEBSTER
Judge

Presented by:
GRAHAM K. BETTS

Copy rec'd this 29th of June, 1937. J. M. Simpson, U. S. Atty. W.

[Endorsed]: No. 8596. United States Circuit Court of Appeals for the Ninth Circuit. Kathleen McClure, as Administratrix of the Estate of John F. McClure, Deceased, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Eastern District of Washington, Northern Division. Filed July 12, 1937.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Upon Appeal From the District Court of the United States for the Eastern District of Washington, Northern Division

Proceedings had in the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt From Proceedings of Wednesday, February 2, 1938

Before WILBUR, DENMAN, STEPHENS, Circuit Judges

No. 8596

Order of submission

Ordered appeal in above cause argued by Mr. Graham K. Betts, counsel for appellant, and by Mr. Newman A. Townsend, Special Attorney Department of Justice, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt From Proceedings of Monday, March 28, 1938

Before DENMAN, MATHEWS, and HEALY, Circuit Judges

No. 8596

Order directing filing of opinion and filing and recording of judgment

By direction of the Court, ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 8596. Mar. 28, 1938

KATHLEEN MCCLURE, AS ADMINISTRATRIX OF THE ESTATE OF JOHN F. MCCLURE, DECEASED, AND INDIVIDUALLY, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Upon Appeal From the District Court of the United States for the Eastern District of Washington, Northern Division

CONSTITUTIONAL LAW

Where a statute is amended and the amendment reenacts portions of the statute the portion so reenacted should be deemed to be effective from the time of its first adoption.

If the language of a statute is not open to doubt the plain words of the statute must be followed. However, if doubt as to Congressional intent exists resort may be had to legislative history and administrative interpretation.

INSURANCE VIII

Where insured permitted his insurance to lapse in 1919, and he became totally disabled in December 1929, at which time compensation was due and uncollected sufficient to revive his insurance under Sec. 305, W. W. V. A. of 1924, as amended, plaintiff may recover, even though Sec. 301 of this act provided that yearly renewable term insurance should cease July 2, 1927.

CONTRACTS 11 (1); INSURANCE VIII; UNITED STATES 1

There is no inherent reason why the benefactions of Section 305, W. W. V. A., should be extended to disabled veterans holding other forms of war risk insurance and denied to others similarly situated whose policies lapsed before conversion of such forms.

The broad beneficient terms of Congress expressed in Sec. 305 are applicable to any type of insurance which lapsed and was thus lost. The Congressional purpose to terminate yearly renewable term insurance does not conflict with extension of relief to veterans whose policies lapsed when the Government should have supplied the means to prevent lapse, but failed by delay in awarding compensation.

STATUTES AND REGULATIONS VI (7) (10)

Section 301, W. W. V. A. 1924, as amended, does not prohibit the application of Sec. 305, to permit recovery on a lapsed war risk term insurance policy by the veteran or his beneficiaries where there existed due and uncollected compensation even though the date of total disability occurred after July 2, 1927, the date of termination of yearly renewable term insurance as provided in Sec. 301, supra.

There are no inconsistencies between Sections 301 and 305, W. W. V. A., but if it be assumed a conflict exists between the general provision of Sec. 301 and the special provision of Sec. 305, the special terms of the statute should control.

The language of Sec. 305, W. W. V. A. is too clear to justify the aid of legislative history or administrative interpretation, particu-

larly where the administrative practice is not clearly established or long continued.

Before WILBUR, DENMAN, and STEPHENS, Circuit Judges.

WILBUR, Circuit Judge: This action was brought by John F. McClure, who claimed that he had become totally and permanently disabled and was entitled to recover upon his war risk insurance. Subsequently he died, and the action was continued by his widow as administratrix of his estate, and individually. The action is predicated upon § 305 of the World War Veterans Act of 1924 (43 Stat. 607, 626), as amended.

The case was tried without a jury and the trial court made its findings of fact which brought the case squarely within the provisions of § 305, supra. The trial court found that the deceased enlisted December 14, 1917, and was discharged January 29, 1919; that he applied for and was granted a policy of war risk term insurance in the sum of $10,000 and paid premiums thereon to and including January 1919; that he became permanently and totally disabled on December 1, 1929, and had not been permanently or totally disabled at any time previous to that date; that on the date the deceased permitted his policy of insurance to lapse for failure to pay the premium in 1919 he was suffering from a compensable disability for which there was then due and uncollected compensation; that on the date of total permanent disability there was due and uncollected compensation in an amount sufficient to pay all premiums due upon said policy had the same been applied in payment thereof since the date the insurance lapsed and that said compensation still remains uncollected by reason of the provisions of § 210 of the World War Veterans Act as amended, the deceased having first made claim for such compensation on the 15th day of April 1929; that the deceased left surviving him his widow and two children. The court concluded as a matter of law that the plaintiff was not entitled to recover because under the provisions of § 301 of the World War Veterans Act, as amended, the policy sued upon ceased and terminated July 2, 1927.

Although the facts found by the trial court brought the case clearly within the provisions of § 305, supra (38 USCA § 516), it is claimed by the government that § 301 of the World War Veterans' Act of 1924, as amended, prohibits the application of § 305 to yearly renewable term insurance where the loss occurred after July 2, 1927, because, as that section (§ 301) was amended June 2, 1926 (44 Stat. 686) it provided that yearly term insurance should cease July 2, 1927. The effect of this interpretation of these two sections (301, 305) would be that if a veteran died or became totally and permanently disabled after the enactment of the World War Veterans' Act of 1924, and before July 2, 1927, he would be entitled to recover under the conditions set forth in § 305, but if death or permanent disability occurred thereafter neither he nor his beneficiaries could recover because of the provisions of the statute (§ 301) declaring that yearly renewable term insurance should cease on July 2, 1927. The government claims that its view is supported by the practice of the Vet-

erans' Bureau and by the decision of the Circuit Court of Appeals of the Tenth Circuit in Skelton v. U. S., 88 F. (2d) 599, upon rehearing. Before considering these matters we will examine the statutes involved and their legislative history.

The provisions found in § 305 of the Act of 1924 are predicated upon a somewhat similar provision of § 408 added to the War Risk Insurance Act of 1921 (42 Stat. 147, 156) by the third proviso of that section. It applied only to compensation for "wounds or disease suffered or contracted in line of service" and was retroactive in favor of those who had died "from said wounds or disease." The Act of 1924 repealed the War Risk Insurance Act as amended (43 Stat. 629, § 601). The repealing act provided that "the sections of this codification herein applicable thereto shall be in force in lieu thereof subject to the limitations contained in this title" (§ 601); and in § 602 that the "repeal of the several acts as provided in §§ 600 and 601 hereof shall not affect any act done or any right or liability accrued, * * * but all such rights and liabilities under said act shall continue and may be enforced in the same manner as if said repeal had not been made * * *."

Sec. 305 of the World War Veterans' Act of 1924 set out in the footnote [1] limited the right to collect insurance which had lapsed to those cases:

1. Where the person at the time of the lapse was suffering from a compensable disability;

2. For which compensation was not collected;

3. Dies or has died or becomes or has become permanently and totally disabled; and

4. At the time of such total and permanent and total disability was or is entitled to compensation remaining uncollected;

5. The amount of recovery to be limited to the amount which such uncollected compensation would purchase "if applied as premiums when due."

It is clear that § 305 as enacted June 7, 1924, supra, applied to the holders of yearly term insurance which had lapsed prior to the passage of the act under the circumstances and conditions described in the section. Sec. 301 of the same act was directed to the problem of converting yearly term insurance to other forms of insurance provided by law and regulation. It provided that "not later than July 2, 1926, all term insurance held by persons who were in the military service after April 6, 1917, shall be converted, without medical examination, in such form or forms of insurance as may be

[1] "SECTION 5. Where any person has heretofore allowed his insurance to lapse while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 202 of the War Risk Insurance Act as amended December 24, 1919, would purchase if applied as premiums when due, shall not be considered as lapsed; and the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier, or his beneficiaries as the case may be the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law."

prescribed by regulation and as the insured may request." It also provided that all term insurance shall cease on July 2, 1926, except when death or total permanent disability shall have occurred before July 2, 1926. It further provided that where yearly renewable term insurance had matured by reason of total permanent disability and the disability had ceased, the insured be given an additional period of two years from the date on which he is required to renew payment of premiums, in which to convert his term insurance.

The government insists that the express provisions for the extension of yearly term insurance contained in § 301 prevent the engrafting upon the provisions of § 301 of another exception based upon § 305. This contention cannot be maintained. Sections 301 and 305 are parts of the same statute enacted at the same time and must be construed together. The numbering of sections is wholly immaterial to their proper interpretation. The subdivision of the act into sections is purely a matter of convenience. Sec. 305 is just as much a part of the legislation in § 301 as though it had been added to § 301 as a paragraph thereof.

A basic fallacy in the contention that § 305 is limited by § 301 providing that yearly term insurance shall cease July 2, 1926, is the implied contention that § 305 makes provision for extending yearly term insurance beyond July 2, 1926. Sec. 305 does not so provide. It deals with the specified case above outlined. It does not extend or renew insurance with the correlative rights of insurer and insured. It exacts no promise, express or implied, for the payment of premiums. It does not permit such payment by the veteran. It provides for the payment of a gratuity in the form of insurance to the veteran, or to his beneficiaries (limited July 2, 1926, 44 Stat. 799, to widow, child or children, or dependent father or mother).[2] The amount was to be ascertained by the fiction of treating such uncollected compensation as though it had been actually paid to the veteran by the government and by him repaid to the government as premiums which would have been due upon his lapsed insurance if it had not lapsed. This legislation recognized that the ascertainment of the amount of compensation allowable under the law was a fact difficult of ascertainment; that the factual decision might be long delayed, and that it was subject to revision even then. If at any time prior to his death or permanent total disability he collects his compensation, neither he nor his beneficiaries can claim payment of the gratuity. That he is not permitted to pay any premium is a clear indication that the yearly term insurance is not continued in force under § 305.

Section 305, supra, limits the application of his unpaid compensation to the lapsed policy. It does not authorize the veteran to convert his policy before July 2, 1927, when the yearly term insurance ceases and to thereafter apply the amount of uncollected compensation to premiums upon some converted form of insurance, but specifically provides for the application of the uncollected compensation to the premiums which were due under the terms of the lapsed policy and not under the terms of the converted policy.

Furthermore, when the War Risk Insurance Act was passed, Congress contemplated the termination of all yearly renewable term war risk insurance within five years. The enactment of § 301, supra, in 1926, carried out this purpose, but the earlier acts provided for the voluntary conversion of yearly term insurance so that when the World War Veterans Act of 1924 was adopted several types of war risk insurance were outstanding.[a] There is no relation between this purpose to terminate yearly renewable term insurance and the purpose sought to be accomplished by § 305 of the War Risk Insurance Act of 1924 which codified and modified the proviso in § 408 of the War Risk Insurance Act of 1921 (42 Stat. 156, supra). The purpose of § 305, supra, was to make an allowance to a totally and permanently disabled veteran or, in case of his death, to his family, in the special circumstances therein set out. There is no inherent reason why this benefaction should be extended to those disabled veterans holding other forms of war risk insurance and denied to others similarly situated whose policies had lapsed before conversion to such forms. The moral obligation of the government in each case is the same and the purpose of Congress to discharge that moral obligation is not confined by the terms of the statute (§ 305) to any particular form of insurance. The broad beneficent purposes of Congress, expressed in § 305, are both in terms and spirit applicable to any type of insurance which has lapsed and thus been lost to the veteran. There is no reason to believe, at least none occurs to us and none has been suggested, that the Congressional purpose to terminate a particular form of insurance (the yearly renewable term insurance) conflicts either in spirit, letter or intent with the avowed purpose of extending relief to a veteran whose insurance had lapsed and thus ceased at a time when the government, in pursuance of its beneficent policy to make compensation to veterans suffering disability, itself should have supplied the means for preventing the lapse, and for continuing the policy in force until the loss occurred and failed to do so because of delay in making the award of such compensation.

We see no inconsistency between § 301 which provides that all term insurance shall cease on a certain date (July 2, 1926) and another provision (§ 305) that where such insurance has already ceased because it has lapsed, the former holder of the policy in the event of total permanent disability, or his beneficiaries in case of his death, may recover all or part of the amount of the policy, as the case may be, because the government deems itself under moral obligation to thus take care of such a situation.

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[a] Compare, Shelton v. U. S. (C. C. A. 10), 88 F. (2d) 599, 601; U. S. v. Weaver (C. C. A. 4), 86 F. (2d) 372, 373; Lynch v. U. S., 292 U. S. 571, 577.

[b] The Annual Report of the Veterans Administration for the year 1924 (p. 427) shows that—

At the close of the fiscal year there were 562,600 government life insurance policies in force, amounting to	$2,984,573,450
Of this number 353,215 were on the converted plan, aggregating	1,375,542,920
209,385 were on the term plan, aggregating	1,609,030,530
An average of 3,500 new converted policies were being issued each month to World War Veterans aggregating	15,000,000

If it be considered that there is a conflict between the general provision of § 301 that the yearly term insurance shall cease July 2, 1926, and the special provision of § 305 for the payment to the insured or to his beneficiaries under the special circumstances therein set forth, the special terms of the statute should control, against its general declaration that yearly term insurance should cease on a certain date. This view is sustained by the familiar rule of statutory construction stated by the Supreme Court in Townsend v. Little, 109 U. S. 504, 512, as follows:

"According to the well settled rule, that general and specific provisions, in apparent contradiction, whether in the same or different statutes, and without regard to priority of enactment, may subsist together, the specific qualifying and supplying exceptions to the general, this provision for the execution of a particular class of deeds is not controlled by the law of the Territory requiring deeds generally to be executed with two witnesses. [citing] Pease v. Whitney, 5 Mass. 380; Nichols v. Bertram, 3 Pick. 341; The State, ex rel. Fosdick v. Perrysburg, 14 Ohio St. 472; London, etc., Railway v. Wandsworth Board of Works, Law Rep. 8 C. P. 185; Bishop on the Written Laws, § 112 a."

We have first dealt with these two sections as they appeared in the World War Veterans Act of 1924 because in subsequent legislation amending them they parted company. We will now consider such subsequent legislation.

On March 4, 1925, § 301 of the World War Veterans Act of 1924 was amended together with many other sections of the act. The amending act provides:

"SEC. 13. Sec. 301 of the World War Veterans Act of 1924 approved June 7, 1924, is hereby amended to read as follows:" Then follows a reenactment of the entire section with minor changes and the provision that "this section shall be deemed to be in effect as of June 7, 1924." So far as the question here under consideration is concerned there is no change in the terms of the section (43 Stat. 1302, 1309). The section was again amended June 2, 1926 (44 Stat. 686). The entire section was reenacted in amended form. It is substantially the same so far as matters involved herein are concerned, except that the date for the termination of yearly term insurance was changed to July 2, 1927. There is, however, a change in phraseology of the statute with regard to the date. Instead of providing as in the original act and in the amendment of 1925 above referred to, that "not later than July 2, 1926 all term insurance * * * shall be converted" and that "all term insurance shall cease on July 2, 1926," etc., the statute provided, "SEC. 301. Except as provided in the second paragraph of this section, not later than July 2, 1927, all yearly term renewable insurance * * * shall be converted," etc. The second paragraph thus referred to is set out below.[4]

[4] "All yearly renewable term insurance shall cease on July 2, 1927, except when death or total permanent disability shall have occurred before July 2, 1927: Provided, however, That the director may by regulation extend the time for the continuing of yearly renewable term insurance and the conversion thereof in any case where on July 2, 1927, conversion of such yearly renewable term insurance is impracticable or impossible due to the mental condition or disappearance of the insured."

The Sixty-ninth Congress amended § 301 of the World War Veterans Act of 1924 on June 2, 1926, and by a separate and later statute amended § 305, thus making § 305 the later expression of the legislative purpose. The statute amending § 301 reenacted the entire section, as amended, and again provided that, "this section shall be deemed to be in effect June 7, 1924." It contained the same language with reference to the conversion and termination of the yearly renewable term insurance July 2, 1927, that was contained in the section as amended in 1924 (43 Stat. 1309, supra).

On May 29, 1928, an act was passed to amend the World War Veterans Act (45 Stat. 964). Among other sections amended by this act were § 301 (45 Stat. 968) and § 305 (45 Stat. 971). So far as the conversion and termination of yearly renewable term insurance is concerned, the amendment of § 301 was identical with the provisions contained in the amendments of 1925 and 1926, supra. The amendment of § 301 again provided: "This section, as amended, shall be deemed to be in effect as of June 7, 1924." Sec. 305 was amended by adding a proviso that compensation should be deemed uncollected although uncollectible under previous statutes.

In determining the effect of these amendments to §§ 301 and 305 of the act of 1924, it should be borne in mind that where a statute is amended and the amendment reenacts portions of the statute the portion so reenacted should be deemed to be effective from the time of its first adoption. In re Fuel, 247 F. 829; Mott Store Co. v. St. Louis, etc. R. Co., 173 Mo. App. 189; 158 S. W. 108; People v. W. A. Wiebolt & Co., 257 Ill. 208, 191 N. E. 389; Barrows v. People's Gaslight & Coke Co., 75 F. 794.

The rule is stated in Corpus Juris 59, p. 1097, § 647:

"Where an amendment leaves certain portions of the original act unchanged, such portions are continued in force with the same meaning and effect they had before amendment, so where an amendatory act provides that an existing statute shall be amended to read as recited in the amendatory act such portions of the existing law as are retained either literally or substantially, are regarded as a continuation of the existing law and not as a new enactment."

Consequently, in determining the effect of the acts amending §§ 301 and 305 we are not necessarily concerned with the question as to which of the two is the later, even if we assume, as it is contended by the government we should, that there is a conflict between the two statutes. As already pointed out, the advantage of being a later amendment shifted to § 301 in 1925; it changed to § 305 in 1926 but still later (1928) both sections were amended by the same act, one by reenactment and the other by an added proviso.

We are concerned here with the act of 1924, as amended by acts to which we have directed attention affecting the two sections whose interpretation is now under consideration. The rule of statutory

construction applicable to such a situation is stated by the Supreme Court in Blair v. Chicago, 201 U. S. 400, 475, as follows:

"The rule was thus stated in Farrell v. State, 54 N. J. Law, 421: 'As a rule of construction, a statute amended is to be understood in the same sense exactly as if it had read from the beginning as it does amended.' People v. Circuit Judge, 37 Michigan, 287. In Conrad v. Nall, 24 Michigan, 275, a section in the chapter of the code was amended, and it was held that it was not intended to operate independently of the other provisions of the chapter, but that the whole chapter in its present form must be read as one act. The rule is correctly stated in Endlich on Statutes, section 294, as follows: 'A statute which is amended is thereafter, and as to all acts subsequently done, to be construed as if the amendment had always been there, and the amendment itself so thoroughly becomes a part of the original statute, that it must be construed, in view of the original statute, as it stands after the amendments are introduced and the matters superseded by the amendments eliminated.'"

We must apply this rule in our consideration of the interpretation of the World War Veterans Act of 1924, with its amended sections 301 and 305. We find no inconsistency between the requirement for the termination by conversion or otherwise of all yearly renewable term insurance (§ 301), and the provisions of § 305 that where such insurance had already lapsed there might be recovery where at the time a total loss is suffered by the veteran or his widow, child, children, dependent father or mother, there remained uncollectible and uncollected compensation due him for injuries or illness existing from the date of lapse until the loss. Assuming, however, that there is an inconsistency between the two sections (301 and 305) literally construed, the special provisions of § 305 must control the general one of § 301. (see authorities supra) There is another rule of statutory construction applicable in case of doubt which supports the same conclusion, that is, that the War Risk Insurance Act should be liberally construed in favor of the insured (U. S. v. Cox, 24 F. (2d) 944; U. S. v. Sligh, 31 F. (2d) 735; U. S. v. LePage, 59 F. (2d) 165; U. S. v. Law, 299 Fed. 61).

The government invokes another rule of statutory construction which is given great weight in cases of doubt, namely, that administrative interpretation may solve the doubt in favor of the administrative interpretation. The government counsel correctly states the rule that where the provisions of a statute are not open to doubt the plain words of the statute must be followed, but that "if upon the face of the statute itself, doubt as to Congressional intent is found to exist, resort to legislative history and administrative interpretation [is] permissible under such circumstances." We have expressed the view that the interpretation of the statute is clear on its face. It follows that the administrative construction is not decisive. To establish administrative practice the government relies upon a communication from the director of the U. S. Veterans' Bureau to Congress, March 10, 1926, while the proposed amendments to §§ 301 and 305, of the

World War Veterans' Act were pending in Congress, wherein he states the cost of the proposed amendments "assuming that § 305 under the present law is not effective subsequent to July 2, 1926." This communication, however, was not incorporated in the report of the committee. Indeed, the omission of such a statement in the report of the committee (H. R. 1217, 69th Congress to accompany H. R. 12175) is significant. The director of the Veterans' Bureau is said to have testified May 24, 1926, before the Senate Committee having in charge the proposed legislation amending §§ 301, 305, and in the course of such testimony the director assumed that § 305 "will not be effective under this provision for cases dying or becoming permanent total subsequent to July 2, 1927."

These statements of the Director of the Bureau in his letter and in his testimony cannot properly be considered by us in arriving at the correct construction of the Congressional enactment. They were not incorporated in the report of the committee and do not purport to state an administrative practice. The government also relies upon a letter of February 28, 1928, from the general counsel to the director reporting on the case of one Morris Cherniavsky which is marked approved F. H. T. Director, February 27, 1928, wherein it was held that "Sec. 305 cannot be applied to prevent the lapse of term insurance where there was neither death nor total permanent disability before July 7, 1927."

We are asked to assume that from that time forward the department acted upon this opinion of the General Counsel and rejected claims for compensation under § 305 which matured after July 2, 1927.

The government also relies upon the rule that where an administrative interpretation of the statute exists at the time of the amendment of the statute it will be presumed that the Congress had knowledge of the administrative interpretation, and if Congress reenacts the statute in the same terms it is presumed to have intended to adopt the administrative interpretation. Nat'l Lead Co. v. U. S., 252 U. S. 140; McCaughn v. Hershey Chocolate Co., 283 U. S. 488, 492; Old Colony R. Co. v. Comm'r., 284 U. S. 552, 557; Johnson v. Manhattan Ry. Co., 289 U. S. 479, 501.

In the application of this rule the appellate points to the amendment of 1928 to § 305 (45 Stat. 971), adding the proviso to § 305 above mentioned. It is difficult, however, to apply the rule invoked by the government to Congressional action on this bill for the opinion of the general counsel is based upon an interpretation of three sections of the statute, §§ 301, 304, and 305, and was apparently rendered while the act of 1928 was before the legislature and shortly before it was enacted. Such an opinion so rendered does not come within the rule announced by the Supreme Court in National Lead Co. v. U. S., 252 U. S. 140, which dealt with a long continued practice (24 years) with several reenactments (4) of the statute, or Johnson v. Manhattan Ry., 289 U. S. 479, which dealt with the reenactment by Congress of a section which had been construed and acted upon for several years and where the court said: "In such circumstances as this court often has pointed out, reenactment oper-

ates as implied legislative approval of the prior construction—in other words, as a reenactment of the statute as before construed."

The Circuit Court of Appeals for the Tenth Circuit in an opinion by Judge McDermott, sustained the claim of the veteran under § 305, supra, but later granted a rehearing, and, relying upon the rules of statutory construction applicable in case of doubt concerning the weight of administrative practice, it resolved that doubt in favor of the government. Skelton v. U. S., 88 F. (2d) 599, supra.

Our decision is predicated upon the ground that the statute is too clear to justify the use of such an aid, particularly where the administrative practice is not clearly established or long continued. The importance of the question involved and the disagreement we have expressed with the decision of the Tenth Circuit will no doubt require consideration of the question by the Supreme Court. We might submit the matter to that court by an appropriately framed question before rendering our decision, but we have decided in the interest of expedition to rule upon the case in the first instance.

We have not considered the effect of the Economy Act or of subsequent statutes modifying that act referred to in Lynch v. U. S., 292 U. S. 571, because of the concession of the government in open court in the course of the argument that if § 305 was not modified or repealed as to yearly renewable term insurance the appellant is entitled to judgment.

Reversed.

[Endorsed:] Opinion. Filed Mar. 28, 1938. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 8596

KATHLEEN MCCLURE, AS ADMINISTRATRIX, ETC., APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Judgment

Upon Appeal from the District Court of the United States for the Eastern District of Washington, Northern Division

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Eastern District of Washington, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed.

[Endorsed:] Judgment. Filed and entered March 28, 1938. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

Certificate of Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit, to Record Certified Under Rule 38 of the Revised Rules of the Supreme Court of the United States

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-three (63) pages, numbered from and including 1 to and including 62, to be a full, true, and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of Hon. Robert H. Jackson, Solicitor General of the United States, counsel for the appellee, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 19th day of May, A. D. 1938.

[SEAL] (Sgd.) PAUL P. O'BRIEN, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE, 1938

Supreme Court of the United States

Order allowing certiorari

Filed October 10, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE 1938